

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 6172 of 1996

Between:

- 1 Chinnayya, S/o. Veerabhadrayya,
Hereditary Trustee and Archaka of Sri Sri Sri Neelamani Durga Devatha
Temple, Pathapatnam, Srikakulam District.
- 2 Anumanchipalli Ganapathi Rao, S/o. Late Thavudu,
Hereditary Trustee and Archaka of Sri Sri Sri Neelamani Durga Devatha
Temple, Pathapatnam, Srikakulam District.
- 3 Anumanchipalli Surya Rao, Adopted S/o. Late Adinarayana,
Hereditary Trustee and Archaka of Sri Sri Sri Neelamani Durga Devatha
Temple, Pathapatnam, Srikakulam District.
- 4 Anumanchipalli Tarakeswara Rao, S/o. Chittenna,
Hereditary Trustee and Archaka of Sri Sri Sri Neelamani Durga Devatha
Temple, Pathapatnam, Srikakulam District.
- 5 Anumanchipalli Chendrabhusanarao, Adopted S/o. Late Chinnayya, Hereditary
Trustee and Archaka of Sri Sri Sri Neelamani Durga Devatha
Temple, Pathapatnam, Srikakulam District.

..... PETITIONERS

AND

- 1 The District Judge & Estates Abolition Tribunal,
Srikakulam
- 2 The Settlement Officer,
Visakhapatnam.
- 3 Sri Sri Sri Neelamani durga Devatha Deity, represented by its Executive
officer, Charitable and Hindu Religious Endowment Department, Government of
Andhra Pradesh,
Srikakulam Dist.
- 4 The Commissioner, Charitable and Hindu Religious Institutions and
Endowments, Govt. of A.P., Hyderabad.
- 5 Malla Parodu, S/o. Late Karranna,
resident of Pathapatnam, Pathapatnam Mandal,
Srikakulam Dist.

- 6 Kurakula Narasimhulu, S/o. Late Suryanarayana, Srikakulam district.
- 7 Pandranki Chandranna, W/o. Appanna, resident of Patnapatnam, Srikakulam District.
- 8 The State of Andhra Pradesh, represented by the Collector, Srikakulam.
- 9 Thonangi/Rajulamma, W/o. Late Rajanna, resident of Pathapatnam, Srikakulam District.
- 10 manthini Ramanamma, W/o. Veeranna, resident of Nagesapu Street, Pathapatnam, Srikakulam District.
- 11 Kinthada Urmila, W/o. Venkati, resident of Pathapatnam, Srikakulam District.
- 12 Thonangi Neelamani, S/o. late Rajanna, resident of Uppara Street, pathapatnam, Srikakulam district.
- 13 Thonangi Durga Prasad, S/o. Late Rajanna, resident of Uppara Street, Pathapatnam, Srikakulam District.
- 14 Thonangi Krishnarao, S/o. late Rajanna, resident of Uppara Street, pathapatnam, Srikakulam district.
- 15 Thonangi Rajeswara Rao, S/o. late Rajanna, resident of Uppara Street, pathapatnam, Srikakulam district.
- 16 Thonangi Laxmana Rao S/o. late Rajanna, resident of Uppara Street, pathapatnam, Srikakulam district.

.....RESPONDENTS

Counsel for the Petitioners: MR.T.S.ANAND
Counsel for the Respondents: MR.C.S.K.V.RAMANAMURTHY

The Court made the following :

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ORAL ORDER:

The case of the petitioners is that Ac.3.32 cents of wetland in S.No. 305/2, Ac.1.69 cents of dry land in S.No. 261/3 and Ac.2.10 cents of mango tope in S.No. 270/9 of Pathapatnam village was given to their ancestors by the Zamindar of Parlakamidi under patta No. 268 and after the coming into force of the A.P. (Andhra Area) Estates Abolition and Conversion into Ryotwari Act, 1948 ('the Act') a rough patta in respect of the said land was also given to them. Since officials of the Hindu Religious and Charitable Institutions are trying to put those lands to auction, on an assumption that those lands belong to Neelamani Durga Temple (third respondent), they filed a petition before the Settlement Officer (second respondent) under Section 56(1) of the Act seeking patta in respect of those lands, Commissioner HR & CE Department, Hyderabad (Fourth respondent) who also was made one of the parties to those proceedings contested the petition alleging that the said land belongs to the third respondent temple. In support of their case, petitioners examined third petitioner as P.W.1 and marked Exs. P1 to P10. In support of the case of the third respondent, R.W.1 to R.W.4 were examined and Exs. R1 to R17 were marked. Second respondent by his order dated 30-05-1989 dismissed the petition. Questioning the said order of dismissal, petitioners filed T.A.S. No. 6 of 1989. Ninth respondent and others filed T.A.S. No. 7 of 1989 before the appellate authority under the Act i.e. the District Judge-cum-Estates Abolition Tribunal, Srikakulam (First respondent), who, by his common order dated 26-12-1995, dismissed both the appeals. This petition is filed questioning the dismissal of T.A.S. No. 6 of 1989. It is represented that the order of dismissal of TAS No. 7 of 1989 is not challenged.

2. The contention of the learned counsel for the petitioners is that failure of respondents 1 and 2 to consider the evidence on record that the land is being cultivated continuously from the time of the ancestors of the petitioners and the petitioners have been cultivating the land in their own right from several

decades prior to coming into force of the Act, and that they themselves have constructed the third respondent-temple with their own funds, and were acting as trustees and Pujarees thereof, and had objected to the appointment of trustees by the fourth respondent to the third respondent temple, whereupon fourth respondent, through Board order No. 5189 dated 15-10-1940 (Ex.P7) vacated the order passed by him earlier on the ground that third respondent temple was declared as 'excepted' one by the board order No. 4268 dated 08-04-1940, resulted in an erroneous dismissal of the petition of the petitioners. It is his contention that since the ancestors of the petitioners were the trustees and archakas and were paying rents to the zamindars prior to the coming into force of the Act and later after coming into force of the Act were paying taxes to the government in their own right as seen from Ex.P1 and P2, and since a rough patta (Ex.P9) was also issued in the name of first petitioner, the order impugned is unsustainable. It is his contention though petitioners filed O.S. No. 28 of 1983 on the file of Vacation Civil Judge, Srikakulam, which was later transmitted to the Court of District Munisif at Pathapatnam and was renumbered as O.S.No.37 of 1983, they had withdrawn the said suit after coming to know that Civil Court does not have jurisdiction to decide the question relating to patta, in view of the ratio in **Annamreddi Bodayya and another Vs. Lokanarapu Ramaswamy**. It is his contention that respondents 1 and 2 were error in holding that the claim of the petitioners is barred by time as no time limit is prescribed for filing a petition before the second respondent under the Act as held by this Court in **Karri Rama Murthy Vs. Adimalla Nagamma** and reiterated in **Penta Appala Naidu Vs. The Government of A.P.** It is his contention that though second respondent rightly held that Ex.P3 proceedings issued by the Manager of the Zamindar relate to the application filed by T.Suryanarayana, first respondent erroneously held that the petitioners through Ex.P3 were directed to approach the Civil Court. It is his contention that first respondent's failure to consider I.A. No. 217 of 1995 in T.A.S. No. 6 of 1989, seeking leave to adduce additional evidence by marking the award in OP No. 13 of 1987 on the file of the Court of the Principal Subordinate Judge, Srikakulam, filed under Section 31 of the Land Acquisition Act, and the enjoyment register maintained by erstwhile zamindars of Parlakamidi, which are also available in the record resulted in an erroneous order being passed by the first respondent.

3. The contention of the learned counsel for the third respondent is since a plain reading of the preamble and Section 56 of the Act, read with Section 2(1) and Section 3(15) and (16) of The Andhra Pradesh (Andhra Area) Estates Land Act, 1908 (hereinafter referred to as 'the 1908 Act') shows that petition in the nature filed by the petitioners before the second respondent are not maintainable because petitioners claim ownership rights but not tenancy rights. It is his contention that since petitioners were acting in a fiduciary capacity while discharging the duties of trustees and pujarees of third respondent temple, which was declared a public temple in 1974, to which a Board of trustees was constituted in 1976, and the lands endowed to it were put to auction in which the first petitioner figured as the highest bidder and cultivated the lands as lessee of the third respondent, they cannot now turn round and set up a right adverse to the third respondent, after having cultivated it as a tenant as highest bidder in the public auction. It is his contention that petitioners filed an application before the second respondent only to continue in possession of the property being claimed by them, after coming to know that the executive officer of the third respondent temple, after the expiry of the lease granted to the first respondent, was contemplating to lease them out through private negotiations to another person. It is also his contention that the documents produced by the petitioners along with I.A.217 of 1995 in TAS No. 6 of 1989 do not help the petitioners, as the appeal preferred against the award in OP No.13 of 1987 was disposed of with an observation that the rights of the parties would be subject to the final orders to be passed by this Court in this petition, and since the enjoyment register maintained by the zamindar relating to the lands claimed by the petitioners, which was marked as Ex.B18 in OP No.13 of 1987 describes the persons in enjoyment as

*'Sri Neelamani Durga Archakulu Anumanchipalli
Thavudu E.Adinarayana, E.Chittibabu, E.Chinnaiah, Thonangi
Kumara Swamy'*

With regard to Ex.P3, it is his contention that since it relates to S.Nos. 95/2, 149/4 and 151/3, but not to the lands being claimed by the petitioners which are in

S. Nos. 270/9 corresponding to old S.No. 270/8, 305/2 and 261/3 as disclosed from the order of the second respondent, the said document is of no help to

decide the petition of the petitioners, first respondent's misconstruing Ex.P3 is of no consequence. With regard to Ex.P9 (rough patta) it is his contention that since rough patta is but a notice calling for objection with regard to the details given therein, and is not a document of title, as held by a Division Bench of this Court in **R.Elumalai Chetty vs. R.Rathnavelu Chetty**, it does not create any right in favour of the petitioners and contended that merely because of they paid rents to the zamindars prior to coming into force of the Act and thereafter to the Government subsequent to coming into force of the Act as evidenced by Exs. P1 and P2, no inference can be drawn in their favour since they must have made those payments as persons in management of the third respondent temple, and relying on the following observations in **Vadlamannaty Bala Tripura Sundaramma vs. Secretary of State and others** that

“Where the grant is made to a person in the capacity of Mutavalli, manager, superintendent, dharmakartha, or even servant of the mosque or temple, and where it does not appear that there is some other trustee, it may be regarded as a grant to the temple or mosque itself.’

he contended that in view of the evidence on record, it has to be taken that the lands being claimed by the petitioners were granted to the third respondent only. He further contended that third respondent not approaching the second respondent for grant of patta is not of any consequence since petitioners who admittedly were managing its affairs at that time, in fact, should have taken steps in that regard and their failing to discharge their duty cannot be taken advantage of by them, and in any event the land in dispute in this case cannot be treated as a 'ryoti land' in view of Sec. 3(16) (c) of the Act, and so petitioners are not entitled to any relief.

4. In reply, the contention of the learned counsel for the petitioners is that in view of the ratio in **T. Munuswami Naidu VS. R.Venkata Reddi and others**, the scope of inquiry under Section 56 of the Act is not limited to the matters enumerated therein and extends beyond, including those covered by Section 11 of the Act and so the jurisdiction of the second respondent to entertain the petition of the petitioners under Section 56(1) cannot be doubted.

5. Assuming that the second respondent has jurisdiction to entertain the application of the petitioners without any time limit, and that second respondent only, but not a Civil Court, has jurisdiction to decide the issue in this case, as contended by the learned counsel for the petitioners, the point for consideration is who among the petitioners and third respondent is entitled to the land in dispute.

6. Relevant portion of the Statement of Objects and Reasons of the Act relied on by the learned counsel for the third respondent reads

“.....The zamindari system has perpetuated an assessment which has no relation to the productive capacity of the land. It has further led to loss of contact between the Government and the actual cultivator and has acted as a brake in regard to agricultural improvement. Most of the irrigation works in estates are in a state of disrepair. The complexities of the zamindari system have led to an immense volume of litigation. Many of the records in the offices of zamindars are indifferently maintained and the peasantry, most of whom are illiterate, are at the mercy of unscrupulous agents. Zamindari administration has rarely, if ever, been as efficient as administration in Government areas.....”

7. Section 56 of the Act reads

56. Decision of certain disputes arising after an estate is notified:

1. Where after an estate is notified, a dispute arises as to (a) whether any rent due from a ryot for any fasli year is in arrear or (b) what amount of rent is in arrear or (c) who the lawful ryot in respect of any holding is, the dispute shall be decided by the settlement Officer.
2. Any person deeming himself aggrieved by any decision of the Settlement Officer under Sub-Section (1) may, within two months from the date of the decision or such further time as the Tribunal may in its discretion allow, appeal to the Tribunal; and its decision shall be final and not be liable to be questioned in any Court of law.

Since ‘Ryot’ is not defined in the Act, and since Section 2(1) of the Act reads

“All expressions defined in the Estates Land Act shall have the same respective meanings as in that Act with the modifications, if any, made by this Act”

for construing the word ‘ryot’ used in Section 56 of the Act, definition of ‘ryot’ in Section 3(15) of the Act 1908 has to be taken into consideration, and it reads

‘Ryot’ means a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the landholder the rent, which is legally due upon it.

Explanation:- A person who has occupied ryoti land for a continuous period of twelve years shall be deemed to be a ryot for all the purposes of this Act.

‘ryoti land’ is defined in Section 3(16) of the Act 1908 as

Means cultivable land in an estate other than private land but does not include-

- a. beds and bunds of tanks and of supply, drainage surplus or irrigation channels;
- b. threshing-floor, cattle-stands, village-sites, and other lands situated in any estate, which are set apart for the common use of the villagers;
- c. land granted on service tenure either free of rent or on favourable rent if granted before the passing of this Act or free of rent if granted after that date, so long as the service tenure subsists.

8. In view of Section 3(16)(c) of the 1908 Act, since petitioners claim that their ancestors, and after them they are the archakas of the third respondent temple, they are in the nature of ‘service holders’. On what term and condition they were rendering service is not known. If they were granted the land as service holder, they should have made an application for grant of patta immediately after the coming into force of the Act. If the land is that of the temple, as trustees of the temple, they ought to have made an application under the Act for and on behalf of the temple. Obviously because the land that is being claimed by the petitioners was granted to the temple only, neither the predecessors in interest of the petitioners nor petitioners might have made an application for patta in their favour.

9. With regard to the contention of the learned counsel for the petitioners that first respondent erred in not taking into consideration the petition I.A.No.214 of 1995 for receipt of additional evidence, it has to be stated that the record received from the first respondent shows that the said I.A. No. 214 of 1995 was dismissed by a separate order on 26-12-1995 but was not heard with TAS No. 6 of 1989, though that appeal also was disposed of on the same day. Since an

application under Order 41 Rule 27 CPC has to be heard along with the appeal and since that procedure was not adopted, I would like to take into consideration the documents sought to be relied on by the petitioner as additional evidence in TAS No.6 of 1989 for deciding this case, negating the request of the learned counsel for the petitioners to remand the case to the first respondent, for fresh consideration taking into consideration those documents also.

10. Petitioners through I.A. 217 of 1995 sought to rely on the award in OP No. 13 of 1987, and the 'enjoyment register' containing the entry relating to Patta No. 268 maintained by the erstwhile zamindar of Parlakamidi. Since both the learned counsel admitted that the order in OP No. 31 of 1987 was carried in appeal in A.S. No. 62 of 1990 and that by the order dated 16-02-1998 the learned appellate Judge set aside the order of the reference Court and ordered that the rights of the parties would be subject to the final orders to be passed by this Court in this petition, award in OP No. 13 of 1987 is of no help to the petitioners to establish their claim.

11. The second document sought to be relied on by the petitioners is a Xerox copy of the 'enjoyment register' maintained by the erstwhile zamindar of Parlakamidi relating to Patta No. 268 the original of which was marked as Ex.B18 in O.P. No. 13 of 1987 and it reads

"Sree Neelamani Durga Archakulu

Anumanchipalli Tavudu, E.Adinarayana

E.Chittibabu, E.Chinnayya, Tonangi

Kumaraswamy"

In my considered opinion, the above said entry instead of supporting the case of the petitioners, in fact fortifies the case of the third respondent, because had the petitioners, or their ancestors were the lessees of the Zamindar in their individual capacity, their names only would have been mentioned and there was no need to mention the name of the deity 'Neelamani Durga' in the enjoyment register. That entry should be taken to mean that the archakas of the deity

Neelamani Durga are enjoying the land on behalf of the deity. Since the presiding deity of the temple cannot itself pay the rents and since somebody else i.e. either the archakas or the trustees, have to act on its behalf and have to pay the rent to the Zamindar on its behalf, the names of the archakas of the deity must have been mentioned in the enjoyment register and so in view of the ratio in Vadlamannaty Bala Tripura Sundaramma case (5 supra) it has to be taken that the land in fact was given to the deity, but not to the petitioners, who are its archakas/trustees of that temple.

12. Ex.P7, which was passed when the Madras Hindu Religious Endowments Act 1927 (Act II of 1927) was in force, and which is strongly relied on by the learned counsel for the petitioners, is of no help to the petitioners because Section defines 'excepted temple' as

- a. a temple which before 1801 was, and since 1863 has continued to be, under the sole management of a trustee whose nomination did not vest in, nor was exercised by, the Government nor was subject to the confirmation of the Government or of any public officer, or
- b. a temple founded since 1842, the right of succession to the office of trustee whereof is hereditary or specially provided for by the founder.

and commentary in the book on that Act by P.Ramanatha Iyer, (published by The Madras Law Journal in 1927) at page 81, there under which contains the report of the Select Committee on 'Excepted temple' reads:

"We have decided to accord a privileged treatment to certain temples, which we have called 'excepted temples' and which are defined in S. 9(5) of the Bill. We have omitted the term 'hereditary temples' which was used in the original Bill to describe temples, all or any of the trustees of which are hereditary trustees. The term 'excepted temples' will exclude cases where even one of the trustees of a temple is non-hereditary. Even among temples in sole charge of hereditary trustees it will exclude cases where the hereditary character of the trusteeship came into being for the first time after 1842. The year 1842 has been chosen as that was the year in which Government began abandoning their control over temples in pursuance of the orders of the Court of Directors directing severance of connection with all idolatrous institutions. When handing over the institutions which had previously had no hereditary trustees the Government started in certain cases a new line of hereditary trustees after 1842, and we consider that institutions in the sole charge of such trustees are not entitled to any privileged treatment. The trustees of most of the 'excepted temples', on the other hand, are Zamindars and other wealthy landholders or other persons who have made and, in some cases, continue to make voluntary contributions for their support. They take strong exception to control by local committees, and any alienation

of their sympathies is likely to affect prejudicially the pecuniary support which the temples have received and are receiving at their hands.”

Inasmuch as the Zamindar of Parlakamidi is not made a party to the proceedings and since records relating to the estate of Parlakamidi are not called for, to establish whether the temple was constructed by Zamindar of Parlakamidi, or the ancestors of petitioners, as contended by the petitioners, and since the petitioners can have no personal knowledge about the construction of the temple, since they could not have been born by the date of the construction of the temple, how the temple came into existence and who actually constructed the temple cannot be decided on the sole interested testimony of the first petitioner as P.W.1. Since the entry in the enjoyment register, for the reasons mentioned above, has to be construed as a grant in favour of the temple, and since documentary evidence, that too, evidence contained in old documents produced from proper custody, has to prevail over oral evidence, the contention of the petitioners that they were the grantees of the lands claimed by them cannot be accepted. In the above circumstances the fact that the third respondent temple was declared as an ‘excepted temple’ under the Madras Hindu Religious Endowments Act 1927 does not fortify the case of the petitioners.

13. If really the petitioners were in enjoyment of the aforesaid land in their own right, they would have raised an objection for putting the leasehold rights in respect of those lands to auction by the executive officer of the third respondent and first petitioner and others would not have participated in the said auction. After having become a tenant of the lands of the third respondent, while continuing in possession of the said lands, first petitioner is estopped from denying the title of the third respondent by virtue of Section 116 of the Evidence Act.

14. The contention of the petitioners that they are entitled to patta, inasmuch as a rough patta in favour of the first petitioner was granted cannot be accepted because in R.Elumalai Chetty case (4 supra) relied on by the learned counsel for the third respondent it was held that rough patta is not a document of title.

15. There is ample evidence on record, both oral and documentary, that third

respondent is exercising ownership rights over the land being claimed by the petitioners. As stated earlier except the interested testimony of the first petitioner as P.W.1, there is no other evidence in favour of the petitioners. Ex.P16 proceedings of the auction conducted on 02-07-1976, in respect of land in S.No. 261/3, 260/3, 305/2 comprising of Ac.1-69 cents, Ac.1-70 cents and Ac.3-30 cents respectively, shows that petitioners 1 and 2 participated in that auction after making a deposit of the earnest money, and that the first petitioner offered the highest bid of 12 bags, and that it was accepted. Ex.R14, fair adangal of Pathapatnam village shows that lands in S.No. 270/8 305/2, 261/3 and 266/3 and 4 are mutated in the name of third respondent. The evidence of R.W.1 clearly shows that first respondent after obtaining the lease, had without cultivating the land taken on lease by him, leased it out to fifth respondent, father of sixth respondent and K.Sanyasi and that those subtenants paid rent to the third respondent. Respondents 1 and 2 participating in the auction, as stated earlier, clearly cuts at the root of their case. In the above circumstances, even if the petitioners were paying rent to the Zamindar as per Ex.P1 receipts prior to coming into force of the Act, and tax to the government after coming into force of the Act as per Ex.P2, it must be deemed that those payments were made only on behalf of the third respondent, more so because petitioners admittedly were the poojaries / trustees of the third respondent.

16. For the above reasons I find no merits in this writ petition and hence the same is dismissed. No order as to costs.

C.Y.SOMAYAJULU, J.

30-12-2005

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